NOVA SCOTIA

Public Service Commission

ANNUAL REPORT ON THE CIVIL SERVICE DISCLOSURE OF WRONGDOING REGULATIONS AND POLICY

2004 - 2005

NOVA SCOTIA PUBLIC SERVICE COMMISSION
NOVEMBER 2005

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November 2005

Message from the Minister of Human Resources

I am pleased to present to the people of Nova Scotia the first Annual Report on the Civil Service Disclosure of Wrongdoing Regulations and Policy. This report provides information on the *Civil Service Disclosure of Wrongdoing Regulations* and *Disclosure of Wrongdoing Policy*, and the Nova Scotia Government's experience with their application in the 2004 - 2005 fiscal year.

All elected, appointed officials and employees of government share a commitment to the highest ethical and moral standards as part of our role in responding to the public service needs of Nova Scotians.

Similarly, senior officials want to be aware of, and act on, wrongdoing within their departments, offices and agencies and must ensure that public servants know that they can disclose wrongdoing within their work environment, without fear of reprisal.

This first annual report is further evidence of the commitment all elected representatives, senior officials, and public servants have to the delivery of quality public service in an environment where values such as integrity, accountability, and public trust prevail.

Sincerely,

Honourable Carolyn Bolivar-Getson
Minister, Human Resources

EXECUTIVE SUMMARY

The Government of Nova Scotia is committed to ensuring that Nova Scotians continue to be served by a professional, ethical, accountable public service; worthy of the public's trust.

The Government of Nova Scotia has developed regulations and policy to outline a clear process to encourage public servants to report any wrongdoing they perceive to be in their workplace, and to protect employees who follow the established process from any reprisal action.

- The *Civil Service Disclosure of Wrongdoing Regulations* became effective September 16, 2004. These regulations are applicable to all civil servants as set out in the *Civil Service Act*.

- The *Disclosure of Wrongdoing Policy* became effective September 17, 2004, and expands the application of the regulations to include adult correction workers, highway workers and other direct employees of government including casual and contract workers.

The first Annual Report on the Civil Service Disclosure of Wrongdoing Regulations and Policy addresses the requirement of government to report annually on disclosures of wrongdoing to the citizens of Nova Scotia. **This annual report covers the period September 16, 2004 to March 31, 2005.**

In the 2004 - 2005 fiscal year, there was one formal disclosure of wrongdoing submitted to the Deputy Minister of Health. The formal disclosure was assessed, investigated and responded to in consultation with the employee who presented the matter to the Deputy.

There were five general inquiries relating to the Disclosure of Wrongdoing Regulations made to the Office of the Ombudsman. Two of these inquiries were from citizens who were not civil service employees. Of the three remaining inquiries, only one requested an information package be sent to them.

The Government of Nova Scotia will continue to gain experience and learn what works best for the citizens of Nova Scotia over the next few years. These lessons learned will form the basis of any enhancements to the regulations and policy.

Part 1: Disclosure of Wrongdoing Regulations and Policy

Government is accountable to the citizens of Nova Scotia and is committed to maintaining a professional public service that is deserving of the public's trust. One way to ensure that these goals are met is through the creation of processes, under the *Disclosure of Wrongdoing Regulations* and *Policy*, to encourage disclosures and to protect employees who report wrongdoing.

> BY KEEPING SILENT, WE WILL NOT BE ABLE TO IDENTIFY AND DEAL WITH ANY WRONGDOINGS, NOR MAINTAIN THE ETHICAL AND PROFESSIONAL PERFORMANCE OF THE PUBLIC SERVICE.

WRONGDOING

These regulations define wrongdoing to include contravention of any *Act* of the Parliament of Canada or of the Legislature, or of any regulations made under any such *Act*, if the contravention relates to the official activities of employees or any public funds or assets; gross mismanagement; an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or the taking of a reprisal against an employee.

DISCLOSURE PROCESS

Government has established numerous mechanisms for employees to raise workplace concerns. These include grievance processes, alternate dispute resolution processes, and performance management systems. The *Disclosure of Wrongdoing Regulations* and *Policy* provide a mechanism specifically designed to encourage employees to bring forward concerns regarding wrongdoing and to assure them of protection from reprisals.

The disclosure process prompts an investigation, requires corrective action, and protects the disclosing employee. Employees are provided with the choice of raising their concerns about wrongdoing or perceived wrongdoing with their immediate supervisor, their deputy minister, and/or the Office of the Ombudsman.

If an employee is not sure how to proceed, or is unsure if something is a wrongdoing, they may also seek confidential advice from the Conflict of Interest Commissioner.

Nothing in these regulations preclude an individual's right and/or obligation to report unlawful/illegal actions or activities to the appropriate authorities. And, wrongdoing can be reported to a police organization when it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person, and when there is not sufficient time to make the disclosure using the internal processes identified above.

Protection from Reprisals and Protection of Privacy

Under the regulations and policy it is a wrongdoing to take reprisal action against an employee who reports wrongdoing.

Throughout the disclosure process, unless required by law or considered appropriate by the deputy head under the circumstances, the identity of persons involved are protected from publication. This includes employees, witnesses, or anyone who is alleged to be responsible for a wrongdoing.

Reporting & Accountability Requirements

Within the *Disclosure of Wrongdoing Regulations* and *Policy* there are reporting requirements for individuals involved in the process. These are necessary to document the information received, monitor timelines, review recommendations, provide responses to disclosing employees, and report annually to the citizens of Nova Scotia on government's experience with disclosures of wrongdoings.

Disclosing employees need to know that their concerns will be addressed in a timely manner. A 30-day response time ensures that the process moves quickly to enable timely resolution, while communicating to reporting employees that the process is working and their disclosure is being addressed.

Deputy heads and immediate supervisors are responsible for ensuring that employees are informed of the regulations and policy. They are also responsible for responding to any disclosures of wrongdoing that are reported to them.

When the Ombudsman receives a disclosure and determines an investigation is warranted, the disclosing employee, the Public Service Commissioner, and the deputy head are notified. If the Ombudsman determines an investigation is not warranted, they will notify the disclosing employee and the Public Service Commissioner and may notify the deputy head.

The Ombudsman must also, within three months after the end of each fiscal year, submit an annual report to the Public Service Commissioner.

The Public Service Commissioner is responsible for submitting an annual report to the Minister of Human Resources. This report will summarize disclosures reaching the Deputy Ministers and/or Ombudsman level throughout government.

The Public Service Commission is responsible for monitoring the effectiveness of the process, and may periodically conduct compliance audits of departmental practices.

PART 2: IMPLEMENTATION AND RECENT EXPERIENCE

THE DISCLOSURE OF WRONGDOING REGULATIONS CAME INTO EFFECT ON SEPTEMBER 16, 2004. THIS ANNUAL REPORT PROVIDES INFORMATION ON THE PERIOD BETWEEN SEPTEMBER 16, 2004 AND MARCH 31, 2005.

SOURCES / METHODOLOGY

The **regulations** are applicable to all civil servants. The **policy** is applicable to all direct employees of government, including Highway Workers, Adult Correction Workers, civil servants, and casual employees.

The information in this annual report was gathered from two sources, the Office of the Ombudsman and deputy heads of government. Both of these groups are required to inform the Public Service Commissioner of disclosure activity within their areas of responsibility.

IMPLEMENTATION

Following the approval of the *Disclosure of Wrongdoing Regulations* and *Policy*, the regulations and policy were communicated, distributed and discussed throughout government. Presentations were made to all departmental senior management teams, at their request, to help them inform their employees and to ensure consistent understanding of and application of the regulations and policy.

The efforts to encourage employees to understand and use the disclosure process continues, as do efforts to consult with the broader public sector on the need for similar policies and processes within their jurisdictions.

RECENT EXPERIENCE

DEPARTMENTAL REPORTS

In 2004 - 2005 fiscal year, there was one formal disclosure of wrongdoing submitted to the Deputy Minister of Health. The disclosure was from an employee who believed that the department had not included all available analysis and information in a report on gambling. The assessment, investigation and response to this disclosure, are summarized as follows:

- When the formal disclosure of wrongdoing was submitted to the

Deputy Minister, a request for further information was made to the disclosing employee.

- The Deputy Minister met with the disclosing employee and other staff of the department on the issue.
- The Deputy Minister responded formally to the disclosing employee, and notified the disclosing employee that an investigation into the matter was being pursued and that a further response would be provided.
- A copy of the disclosure and the response to the disclosing employee was submitted to the Public Service Commissioner.
- It was the Deputy's conclusion that the concerns raised, while well intended and reasonable, did not constitute a wrongdoing. The Deputy's conclusion was accordingly communicated to the disclosing employee.

The Public Service Commissioner contacted all government departments and offices to which the *Disclosure of Wrongdoing Regulations* and *Policy* apply. With the exception of Department of Health, all replied that no formal disclosures of wrongdoing were received in their departments.

OFFICE OF THE OMBUDSMAN REPORT

The Office of the Ombudsman submitted its Annual Report to the Public Service Commissioner. This annual report outlined activity in their office during the period September 16, 2004 to March 31, 2005 and included the following disclosure-related information:

- There were no formal disclosures of wrongdoing submitted to the Office of the Ombudsman in 2004 - 2005.
- There were, however, five general inquiries relating to the Disclosure of Wrongdoing Regulations.
    - Two of these inquiries were by citizens, not civil servants, and were redirected to other processes.
    - Of the three remaining inquiries, one requested an information package be sent to them.

- The Office of the Ombudsman has outlined one recommendation for improvement. This recommendation requests that the Public Service Commission develop and communicate further clarification with regards to the scope of Section 20(c). The subject matter of this section deals with the potential for disciplinary action against an employee who makes a disclosure of wrongdoing other than in the course of a procedure established under the *Disclosure of Wrongdoing Regulations* or any *Act* of the Legislature or when otherwise lawfully required to do so. The Public Service Commission accepts and will act on this recommendation in the 2005 - 2006 fiscal year.

PART 3: WHERE TO FROM HERE?

THE FUTURE

As this is the Government of Nova Scotia's first experience with development and implementation of the *Disclosure of Wrongdoing Regulations* and *Policy*, no conclusions can be drawn about their full effect or potential.

Communication of the regulations and policy is an ongoing commitment. In 2005 - 2006, the PSC will develop a webpage about disclosure of wrongdoing, and communicate this information to all employees of government. Management and staff will also be provided with an assessment/investigation guide to help them through the disclosure process.

The recommendation from the Office of the Ombudsman's Office requesting that the Public Service Commission develop and communicate further clarification with regards to the scope of Section 20(c), has been accepted and will be acted upon in the 2005 - 2006 fiscal year.

It is the government's view that all arms-length agencies and government corporations should implement similar policies for their respective employees. For this reason, in the fiscal year 2005 - 2006, the PSC will consult with the heads of government entities in the broader public service regarding the implementation of a disclosure of wrongdoing policy in their sectors. Government will advise and assist these groups where no similar policies exist, as organizations are encouraged to develop their own policies to encourage disclosure of wrongdoing and to ensure that employees are protected from reprisals as a consequence of their disclosure.

Over the next few months and years, government will gain experience and learn what works best to ensure its accountability to the citizens of Nova Scotia. The work to collect information from other jurisdictions, consult with the broader public sector, monitor informal comments from public servants, and evaluate and address the concerns of our employees will continue to foster high ethical standards and accountability in the public service and enhance and promote public trust.

For further [illegible] questions about the Disclosure [illegible] Policy, please email PSC-[illegible]@gov.ns.ca

PART 3: WHERE TO FROM HERE?

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For further information, or questions about the Disclosure of Wrongdoing Policy, please email PSC-disclosure-info@gov.ns.ca

Civil Service Disclosure of Wrongdoing Regulations

made under Section 45 of the

Civil Service Act

R.S.N.S. 1989, c. 70

O.I.C. 2004-374, N.S. Reg. 205/2004

September 16, 2004

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made under Section 45 of the
Civil Service Act
R.S.N.S. 1989, c. 70
O.I.C. 2004-374 (September 16, 2004), N.S. Reg. 205/2004

Definitions

1 In these regulations,

(a) "civil service" means the positions in the public service of the Province to which appointments may be made by the Public Service Commission and such other positions as may be designated as positions in the Civil Service by the Governor in Council;

(b) "Commissioner" means the Public Service Commissioner;

(c) "deputy head" means the deputy of the member of the Executive Council presiding over a department and all others whom the Governor in Council from time to time designates as having the status of deputy head;

(e) "employee" means a person appointed to the civil service;

(f) "Ombudsman" means the Ombudsman appointed under the *Ombudsman Act*.

Wrongdoing

2 (1) For the purposes of these regulations, a wrongdoing occurs if there is

(a) a contravention of any Act of the Parliament of Canada or of the Legislature, or of any regulations made under any such Act, if the contravention relates to the official activities of employees or any public funds or assets;

(b) gross mismanagement;

(c) an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or

(d) the taking of a reprisal against an employee.

(2) For the purposes of clause (1)(b), gross mismanagement means a deliberate act or an omission showing a reckless or wilful disregard for the efficient management of significant government resources.

Protection of employee from reprisal

3 (1) A reprisal occurs if any of the following measures are taken against an employee by reason solely that the employee has, in good faith, made a disclosure of a wrongdoing under these regulations or expressed an intention to make a disclosure of a wrongdoing under these regulations or has, in good faith, co-operated in an investigation carried out under these regulations:

(a) a disciplinary measure;

(b) demotion of the employee;

(c) termination of the employment of the employee;

(d) any measure that adversely affects the employment or working conditions of the employee; or

(e) a threat to take any of the measures referred to in clauses (a) to (d).

(2) No person shall take a reprisal against an employee.

Request for advice

4 (1) An employee who is considering making a disclosure of a wrongdoing may make a written request for advice to the Conflict of Interest Commissioner designated under Section 26 of the *Members and Public Employees Disclosure Act*.

(2) The Conflict of Interest Commissioner must not publically disclose any information provided under subsection (1) and must protect the identity of persons named under subsection (1), unless otherwise required by law.

Contents of disclosure of wrongdoing

5 (1) A disclosure of a wrongdoing under subsection 6(1) must be in writing and must include the following information, if known:

(a) the nature of the wrongdoing;

(b) the name of the person or persons alleged to have committed or about to commit the wrongdoing;

(c) the date and description of the wrongdoing; and

(d) whether the disclosure has already been made and a response received under these regulations,

and any additional relevant information.

(2) A disclosure of a wrongdoing under subsection 6(1) must be made within 12 months of the employee becoming aware of the wrongdoing.

Procedure for disclosure of wrongdoing

6 (1) An employee who reasonably believes that they are being asked to commit a wrongdoing, or who reasonably believes that a wrongdoing has been committed or is about to be committed, may disclose the matter to

(a) their immediate supervisor;

(b) their deputy head, in accordance with Section 8; or

(c) the Ombudsman, in accordance with Section 10.

(2) Despite subsection (1), an employee may make a disclosure of a wrongdoing other than as provided for in subsection (1) if they believe on reasonable grounds that

(a) it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person; and

(b) there is not sufficient time to make the disclosure under these regulations.

(3) A disclosure under subsection (2) must be made to the police department or police agency that the employee reasonably believes can address the imminent and serious danger identified.

Response of immediate supervisor to disclosure of wrongdoing

7 (1) A supervisor who receives a disclosure of a wrongdoing under clause 6(1)(a) must investigate the matter to the extent appropriate and must respond in writing to the disclosing employee within 30 days of receiving the disclosure.

(2) A supervisor who receives a disclosure of a wrongdoing under clause 6(1)(a) must report in writing to their deputy head, within 30 days of receiving the disclosure, advising of

(a) the disclosure;

(b) the results of the investigation to date; and

(c) the written response to the disclosing employee.

(3) Unless required by law, a supervisor who receives a disclosure of wrongdoing under clause 6(1)(a) must

(a) not publically disclose any information that comes to their knowledge in the performance of their duties under these regulations; and

(b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

Disclosure of wrongdoing to deputy head

8 To make a disclosure of a wrongdoing under clause 6(1)(b), an employee must

(a) have received a response from their immediate supervisor under subsection 7(1) and must reasonably believe that the matter will not be appropriately addressed; or

(b) reasonably believe that it would not be appropriate to disclose the matter to the employee's immediate supervisor because of the subject-matter of the wrongdoing or the person alleged to have committed it.

Response of deputy head to disclosure of wrongdoing

9 **(1)** A deputy head who receives a disclosure of a wrongdoing under clause 6(1)(b) must investigate the matter to the extent appropriate and must respond in writing to the disclosing employee within 30 days of receiving the disclosure.

(2) A deputy head who receives a disclosure of a wrongdoing under clause 6(1)(b) must report in writing to the Commissioner, within 30 days of receiving the disclosure, advising of

(a) the disclosure;

(b) the results of the investigation to date; and

(c) the written response to the disclosing employee.

(3) Unless required by law or considered appropriate by the deputy head under the circumstances, a deputy head who receives a disclosure of wrongdoing under clause 6(1)(b) or a report under subsection 7(2) must

(a) not publically disclose any information that comes to their knowledge in the performance of their duties under these regulations; and

(b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

(4) A deputy head who receives a disclosure of a wrongdoing under ~~subsection~~ [clause] 6(1)(b) or a report under subsection 7(2) may, within 30 days of receiving the disclosure or report, refer the matter to the Ombudsman and the referral must be treated in the same manner as a disclosure of a wrongdoing under clause 6(1)(c) made for the reason set out in clause 10(a).

Disclosure of wrongdoing to Ombudsman

10 To make a disclosure of a wrongdoing to the Ombudsman under clause 6(1)(c), an employee must

(a) have received a response in accordance with subsection 9(1) and must reasonably believe that the matter will not be appropriately addressed; or

(b) reasonably believe that it would not be appropriate to disclose the matter to the employee's immediate supervisor or deputy head because of the subject-matter of the wrongdoing or the person alleged to have committed it.

Investigation by Ombudsman

11 The Ombudsman must investigate a disclosure of a wrongdoing under clause 6(1)(c) unless the Ombudsman is of the opinion that

(a) the disclosing employee ought to have exhausted other procedures available to them;

(b) the subject-matter of the disclosure is one that could more appropriately be dealt with, initially or completely, according to an alternate procedure provided for under an Act of the Legislature, regulation or policy;

(c) the subject-matter of the disclosure is trivial, frivolous or vexatious;

(d) the disclosure was not made in good faith with the reasonable belief in the truth of the allegations;

(e) the disclosure does not provide adequate particulars of a wrongdoing as required by subsection 5(1);

(f) the matter was not submitted within the time limit specified in subsection 5(2);

(g)t he matter should be referred to another authority having jurisdiction to investigate; or

(h) having regard to all the circumstances of the case, further investigation is not warranted.

Notification of investigation

12 (1) If the Ombudsman concludes under Section 11 that it is appropriate to investigate a disclosure of wrongdoing under clause 6(1)(c), the Ombudsman must give written notice to the disclosing employee, the deputy head of the department to be investigated and the Commissioner.

(2) If the Ombudsman concludes under Section 11 that it is not appropriate to investigate a disclosure of wrongdoing under clause 6(1)(c) made for the reason set out in clause 10(a), the Ombudsman must give written notice to the disclosing employee, their deputy head and the Commissioner of the Ombudsman's conclusion and of the reasons for it.

(3) If the Ombudsman concludes under Section 11 that it is not appropriate to investigate a disclosure of wrongdoing under clause 6(1)(c) made for the reason set out in clause 10(b), the Ombudsman must give written notice to the disclosing employee and the Commissioner of the Ombudsman's conclusion and of the reasons for it.

Ombudsman's report of investigation

13 (1) The Ombudsman must report any investigation findings in writing, including,

(a) the information received in the disclosure;

(b) the steps taken in the investigation;

(c) a summary of the evidence obtained; and

(d) whether a wrongdoing has been established,

and any additional relevant information, to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner.

(2) If a finding of wrongdoing is made by the Ombudsman, the Ombudsman

(a) must recommend measures in writing to correct the wrongdoing to the appropriate deputy head, and send copies to the disclosing employee and the Commissioner; and

(b) may request notification, within a specified time, of any steps taken to give effect to the recommendations made under clause (a).

Deputy head to respond to Ombudsman's recommendations

14 In addition to any requested notification under clause 13(2)(b), a deputy head who receives recommendations under clause 13(2)(a) must respond in writing within 30 days to the Ombudsman and must provide a copy of the response to the Commissioner.

Ombudsman may report to member of Executive Council

15 If the Ombudsman considers it necessary, the Ombudsman may report a matter to an appropriate member of the Executive Council, including, but not limited to, when

(a) action has not been taken within a reasonable time in respect of one of the Ombudsman's recommendations to a deputy head under clause 13(2)(a); or

(b) a situation exists that constitutes an imminent risk of a substantial and specific danger to the health and safety of the public.

Ombudsman's annual report

16 The Ombudsman must, within 3 months after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year

(a) the number of general inquiries relating to these regulations;

(b) the number of disclosures received;

(c) the number of investigations commenced;

(d) the number of recommendations made pursuant to clause 13(2)(a);

(e) whether there are any systemic problems that give rise to wrongdoings; and

(f) any recommendations for improvement that the Ombudsman considers appropriate,

and any additional matter that the Ombudsman considers necessary.

Commissioner's annual report

17 (1) The Commissioner must report annually to the Minister responsible for the Public Service Commission respecting the disclosures of wrongdoing made during the fiscal year.

(2) The Minister will table the report received under subsection (1) in the House of Assembly.

Cooperation with Ombudsman

18 (1) A deputy head must provide the Ombudsman with any facilities, assistance, information and access to the offices under their control and direction that the Ombudsman requires for the performance of the Ombudsman's duties under these regulations.

(2) Subject to Section 19, every employee must co-operate with the Ombudsman and provide the Ombudsman with any information that the Ombudsman may require in the performance of the Ombudsman's duties under these regulations.

Information employee not authorized to disclose

19 Nothing in these regulations authorizes an employee to disclose

(a) information that would reveal the substance of deliberations of the Executive Council or any of its committees; or

(b) information that is protected by solicitor-client privilege.

Disciplinary action against employee

20 In addition to, and apart from, any other sanction provided for by law, an employee may be subject to appropriate disciplinary action, including termination of employment, if the employee

(a) commits a wrongdoing;

(b) makes a disclosure of a wrongdoing and the disclosure is frivolous, vexatious or in bad faith; or

(c) makes a disclosure of a wrongdoing other than in the course of a procedure established under these regulations or any Act of the Legislature or when otherwise lawfully required to do so.

False or misleading statement

21 No person shall, in a disclosure of a wrongdoing or in the course of any investigation of a wrongdoing, knowingly make a false or misleading statement, either orally or in writing, to a supervisor, deputy head, the Ombudsman or a person acting on behalf of or under the direction of any of them.

Obstruction in performance of duties

22 No person shall wilfully obstruct a supervisor, a deputy head, the Ombudsman or any person acting on behalf of or under the direction of any of them, in the performance of their duties under these regulations.

Destruction, falsification or concealment of documents or things

23 No person, knowing that a document or thing is likely to be relevant to an investigation under these regulations, shall

(a) destroy, mutilate or alter the document or thing;

(b) falsify the document or make a false document;

(c) conceal the document or thing; or

(d) direct, counsel or cause, in any manner, any person to do anything mentioned in clauses (a) to (c), or propose, in any manner, to any person that they do anything mentioned in those clauses.

Confidentiality obligation of Ombudsman

24 Unless required by law or permitted by these regulations, the Ombudsman must

(a) not publically disclose any information that comes to the Ombudsman's knowledge in the performance of the duties under these regulations; and

(b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

Grievances and appeals not prohibited

25 Nothing in these regulations prohibits a person from filing a grievance under an applicable civil service collective agreement or an appeal under Section 94 of the *Civil Service General Regulations*.

20 Disclosure of Wrongdoing Policy

Policy Statement

The Government of Nova Scotia is committed to providing employees with a reporting process for the disclosure of government wrongdoing and with protection against reprisal action which might have resulted from the disclosure.

This policy balances the employee's protection against reprisal for disclosing government wrongdoing, with the rights of the alleged wrongdoer. The clearly defined process for disclosure will allow for confidentiality, investigation, and recommendations.

This policy and the Regulations Respecting Civil Service Disclosure of Wrongdoing are in addition to provisions that already exist under acts such as the *Occupational Health and Safety Act*, *Ombudsman Act*, *Environment Act*, *Human Rights Act* and *Civil Service Act*, and also under collective agreements and at common law.

This policy has been developed pursuant to the Regulations Respecting Civil Service Disclosure of Wrongdoing.

Definitions

COMMISSIONER
The Public Service Commissioner.

CONFLICT OF INTEREST COMMISSIONER
A person designated under Section 26 of the *Members and Public Employees Disclosure Act*.

DEPUTY HEAD
The deputy minister or designate of a department, or the senior administrative officer of an agency not reporting to a deputy minister.

EMPLOYEE
- an employee as defined in the *Civil Service Act*
- an employee as defined in the *Corrections Act*
- an employee as defined in the *Highway Workers Collective Bargaining Act; or*
- any other person directly employed by the Province of Nova Scotia

EMPLOYER
Her Majesty in the right of the Province of Nova Scotia, as represented by Nova Scotia government departments, offices, and public service entities as specified in Category I of Appendix 1-A (Management Manual 100, Chapter 1, Policy 1.2 Management Manuals Policy).

GROSS MISMANAGEMENT
A deliberate act or an omission showing a reckless or wilful disregard for the efficient management of significant government resources.

OMBUDSMAN
The Ombudsman appointed pursuant to the *Ombudsman Act*.

REPRISAL
Reprisal action taken against an employee who has made a disclosure, in good faith, of wrongdoing under the Regulations Respecting Civil Service Disclosure of Wrongdoing includes

- a disciplinary measure
- demotion of the employee
- termination of the employment of the employee
- any measure that adversely affects the employment or working conditions of the employee, or
- a threat to take any of the previously identified measures.

WRONGDOING
A wrongdoing occurs if there is

- a violation of any Parliament of Canada or *Nova Scotia Legislature Act* or of any regulations made under any act, if the violation relates to the official activities of employees or any public funds or assets
- gross mismanagement
- an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or
- the taking of a reprisal against an employee.

Policy Objectives

- To provide a process for the disclosure of wrongdoing and protection to employees who want to report government wrongdoing without fear of reprisal action being taken against them.
- To offer advice and direction for employees who want to disclose government wrongdoing.

- To protect the identity (whenever possible) of those involved in the process (e.g., alleged wrongdoer, employee disclosing and witnesses).
- To promote accountability for government by tabling an annual report in the House of Assembly.
- To clearly define wrongdoing in government and reprisal action not acceptable against the employee disclosing wrongdoing in good faith.

Application

This policy applies to all employees as defined above.

Policy Directives

An employee may request advice on the disclosure of a wrongdoing from the Conflict of Interest Commissioner by submitting a written request for advice (Appendix 20-A).

DISCLOSURE PROCESS

Employees are expected to follow a systematic approach for the disclosure of a wrongdoing by the disclosure process identified below. **All disclosures must be made in written form** (Appendix 20-B), unless there is imminent and serious danger.

1. An employee who reasonably believes that they are being asked to commit a wrongdoing, or who reasonably believes that a wrongdoing has been committed or is about to be committed, may disclose the matter to their immediate supervisor/ manager.
2. If an employee reasonably believes the matter is not being appropriately addressed by their immediate supervisor/manager, or if the employee reasonably believes it is not appropriate to disclose the matter to their immediate supervisor they may disclose the matter to their deputy head.
3. If an employee reasonably believes the matter is not being appropriately addressed by their deputy head or if the employee reasonably believes it is not appropriate to disclose the matter to their deputy head, they may disclose the matter to the Ombudsman.
4. An employee may make a disclosure of wrongdoing to the police department or police agency that the employee reasonably believes can address imminent and serious danger, only if they believe on reasonable grounds that
   - it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person; and

- there is not sufficient time to make the disclosure using the processes identified above in this policy.

5. A supervisor/deputy head who receives the disclosure must respond in writing to the disclosing employee within **30 days**, in addition
   - a supervisor must report in writing to their deputy head, within 30 days of receiving the disclosure from the disclosing employee; **or**
   - a deputy head must report in writing to the Commissioner, within 30 days of receiving the disclosure from the disclosing employee.
6. A deputy head who receives a disclosure of wrongdoing or a report notifying them of an alleged wrongdoing, may within **30 days** of receiving the information, refer the matter to the Ombudsman.
7. The Ombudsman, after receiving the disclosure either from the disclosing employee or the deputy head will determine if an investigation is warranted (Appendix 20-C).
   - If it is not appropriate to investigate the Ombudsman will give written notice to the disclosing employee, Commissioner, and deputy head in such cases where the deputy head has been made aware of the disclosure.
   - If it is appropriate to investigate the Ombudsman will give written notice to the disclosing employee, the deputy head of the department to be investigated, and the Commissioner.
8. After an investigation, the Ombudsman must report the findings in writing (Appendix 20-C), to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner.
9. If a finding of wrongdoing is made by the Ombudsman, the Ombudsman
   - must recommend measures in writing to correct the wrongdoing to the appropriate deputy head, and send copies to the disclosing employee and the Commissioner; and
   - may request notification, within a specified time, of any steps taken to give effect to the recommendations.
10. The deputy head must respond in writing within **30 days** to the Ombudsman with respect to any recommendations in the investigation report. A copy of the deputy head's response must be provided to the Commissioner.
11. The Ombudsman may report a matter to an appropriate member of the Executive Council, in situations as specified in Section 15 of the Regulations Respecting Civil Service Disclosure of Wrongdoing.

12. The Ombudsman must, within **3 months** after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year, the information specified in Appendix 20-C.
13. The Commissioner must report annually to the Minister responsible for the Public Service Commission, respecting disclosures of wrongdoing made during the fiscal year.
14. The Minister will table the report received from the Commissioner in the House of Assembly.

POWERS AND LIMITATIONS

- A disclosure of wrongdoing must be made within 12 months of the employee becoming aware of the wrongdoing.
- A deputy head must provide the Ombudsman with any facilities, assistance, information and access to the offices under their control and direction that the Ombudsman requires for the performance of their duties under this policy.
- No person shall wilfully obstruct a supervisor, a deputy head, the Ombudsman or any person acting on behalf of or under the direction of any of them, in the performance of their duties under this policy.
- Every employee must co-operate with the Ombudsman and provide them with any information that they may require in the performance of the Ombudsman's duties under this policy.

PROTECTION AND CONFIDENTIALITY

- To the extent possible, the identity of the persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, shall be protected from publication.
- No person should publically disclose any information that comes to their knowledge in the performance of their duties under this policy.
- An employee shall not disclose information that would reveal the substance of deliberations of the Executive Council or any of its committees; or information that is protected by solicitor-client privilege.

FALSE OR MISLEADING DISCLOSURES

- No person shall, in a disclosure of a wrongdoing or in the course of any investigation of a wrongdoing, knowingly make a false or misleading statement, either orally or in writing, to a supervisor, deputy head, the Ombudsman or a person acting on behalf of or under the direction of any of them.

- No person, knowing that a document or thing is likely to be relevant to an investigation under this policy, shall
  - destroy, mutilate or alter the document or thing
  - falsify the document or make a false document
  - conceal the document or thing; or
  - direct, counsel or cause, in any manner, any person to do anything mentioned above, or propose, in any manner, to any person that they do anything mentioned in the above clauses.
- An employee may be subject to appropriate disciplinary action, including termination of employment, if the employee
  - commits a wrongdoing
  - makes a disclosure of a wrongdoing which is determined to be frivolous, vexatious, or in bad faith; or
  - makes a disclosure of a wrongdoing other than in the course of a procedure established under this policy or any act of the Legislature or when otherwise lawfully required to do so.

Accountability

EMPLOYEES

Employees are responsible for acting in accordance with this policy.

SUPERVISORS/MANAGERS

Supervisors/managers are responsible for ensuring that employees are informed of the policy and process. They are also responsible for responding to any disclosures of wrongdoing that are reported to them in accordance with the process established in this policy.

DEPUTY HEADS

Deputy Heads are responsible for ensuring that employee disclosures are reviewed and addressed as provided for in this policy. They are also responsible for responding to any disclosures of wrongdoing that are reported to them in accordance with the process established in this policy.

Deputy Heads shall ensure all employees are provided education, training, and support during the implementation of this policy.

COMMISSIONER

The Public Service Commissioner is responsible for an annual report to the Minister of Human Resources.

OMBUDSMAN

The Ombudsman is responsible for responding to any disclosure of wrongdoing in accordance with the process as established in this policy, and reporting annually to the Public Service Commissioner.

Monitoring

The Public Service Commission is responsible for monitoring the effectiveness of the process within the policy, and may periodically conduct audits of departmental practices to ascertain compliance by departments with this policy.

Departments are responsible for complying with all the terms of this policy.

References

Civil Service Act
General Civil Service Regulations
Regulations Respecting Civil Service Disclosure of Wrongdoing
Highway Workers Collective Bargaining Act
Corrections Act
Ombudsman Act
Members and Public Employees Disclosure Act

Enquiries

General Enquiries, Public Service Commission (902) 424-7660

Appendices

Appendix 20-A Request for Advice
Appendix 20-B Disclosure of Wrongdoing Form
Appendix 20-C Investigation Criteria for Ombudsman to Investigate a Disclosure of Wrongdoing and Reporting Requirements of the Ombudsman

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Approval date: September 8, 2004
Approved by: Executive Council

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Most recent review:

Appendix 20-A

NOVA SCOTIA

Request for Advice

I, _____ of the Department _____ in
(Print Name) (Print Department)

_____ request advice on the following matter:
(Print Location)

Nature of the wrongdoing:

Date of wrongdoing:

Name of person alleged to have committed or to commit the wrongdoing:

Department and Position of wrongdoer:

Advice requested:

Further comments:

_____

_____

_____ _____

Signature Date

Contact Information:

Email: _____

Phone: _____

Conflict of Interest Commissioner
Granville Level, Joseph Howe Building
1690 Hollis Street
Halifax, NS
Phone: (902) 424-5345
Fax: (902) 424-0632

Appendix 20-B

NOVA SCOTIA

Disclosure of Wrongdoing Form

I, _____ of the Department _____ in
(Print Name) (Print Department)

_____ would like to disclose a wrongdoing.
(Print Location)

Nature of the wrongdoing:

Date of wrongdoing:

Name of person alleged to have committed or to commit the wrongdoing:

Department and Position of wrongdoer:

Has this disclosure been made before? _____
If yes, to whom and when (name, position, department, date):

Further comments:

_____

_____

_____ _____
Signature Date

Contact Information:
Email: _____

Phone: _____

Appendix 20-C

NOVA SCOTIA

Investigation Criteria for Ombudsman to Investigate a Disclosure of Wrongdoing and Reporting Requirements of the Ombudsman

Investigation Criteria

The Ombudsman must investigate a disclosure of a wrongdoing if

- all other procedures available to the disclosing employee have been exhausted before submitting the disclosure of wrongdoing to the Ombudsman's Office
- the subject matter of the disclosure would not be dealt with more appropriately by an alternate procedure under an act of the Legislature, regulation or policy
- the subject matter of the disclosure is not trivial, frivolous or vexatious
- the disclosure was made in good faith with the reasonable belief in the truth of the allegations
- the disclosure provides adequate particulars of a wrongdoing in writing as outlined in Appendix 20-B
- the disclosing employee was not aware of the wrongdoing for longer than twelve (12) months
- if no other authority has jurisdiction over the investigation (e.g., criminal investigation being conducted by Law Enforcement)
- having regard to all the circumstances of the case, an investigation is warranted.

Reporting Requirements

The Ombudsman must report any investigation findings in writing, including

- the information received in the disclosure
- the steps taken in the investigation
- a summary of the evidence obtained
- whether a wrongdoing has been established
- any additional relevant information, to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner

The Ombudsman must, within 3 months after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year

- the number of general inquiries relating to this policy
- the number of disclosures received
- the number of investigations commenced
- the number of recommendations made to appropriate deputy heads
- whether there are any systemic problems that give rise to wrongdoings
- any recommendations for improvement that the Ombudsman considers appropriate
- any additional matter that the Ombudsman considers necessary.